

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SUNOCO PARTNERS MARKETING &  
TERMINALS L.P.,

Plaintiff,

v.

POWDER SPRINGS LOGISTICS, LLC, and  
MAGELLAN MIDSTREAM PARTNERS,  
L.P.,

Defendants.

Civil Action No. 17-1390-RGA

ORDER

Sunoco moves to strike Exhibits A–G attached to Defendants’ Proposed Findings of Fact, as well as all references to Exhibits A–G in Defendants’ Proposed Findings of Fact. (D.I. 844 at 1). These exhibits relate to the prior art Kerr-McGee system, which was an invalidating reference in *Sunoco Partners Mktg. & Terminals L.P. v. U.S. Venture, Inc.*, 339 F. Supp. 3d 803, 826 (N.D. Ill. 2018), *aff’d in part, vacated in part, rev’d in part on other grounds*, 32 F.4th 1161 (Fed. Cir. 2022).

Defendants never introduced evidence relating to the Kerr-McGee system at trial. (*See* Trial Tr. at 1147:3–8, 1156:21–1157:4). Nor did they include any information relating to the Kerr-McGee system in their post-trial § 101 briefing. (*See* D.I. 794, 824). Defendants introduced this information for the first time in response to my request for “proposed findings of fact, with citations to the record, regarding whether [certain] claimed steps . . . were well-understood and conventional activities at the relevant priority date.” (D.I. 836).

This order, however, was not an invitation for Defendants to submit new evidence. It is entirely too late for Defendants to introduce new evidence to the record. *See TruePosition Inc. v. Andrew Corp.*, 2008 WL 205305, at \*2 (D. Del. Jan. 23, 2008) (granting motion to strike evidence presented for the first time in the post-trial briefing because “the time for gathering and presenting rebuttal evidence . . . has come and gone”); *Aventis Pharma S.A. v. Hospira, Inc.*, 743 F. Supp. 2d 305, 362 n.1 (D. Del. 2010), *aff’d*, 675 F.3d 1324 (Fed. Cir. 2012) (denying motion to strike as moot but explaining, “The parties’ post-trial briefs should be based only on evidence actually presented at trial, and not any evidence that could have been presented at trial.”).

Therefore, Sunoco’s Motion to Strike (D.I. 843) is **GRANTED**. Exhibits A–G (D.I. 841-1 to 841-7) attached to Defendants’ Proposed Findings of Fact, as well as all references to Exhibits A–G in Defendants’ Proposed Findings of Fact (D.I. 840) are **HEREBY STRICKEN**.

Entered this 16th day of August, 2022.

/s/ Richard G. Andrews  
United States District Judge